KD Christian Construction Company, Inc. *and* Carpenters District Council of Kansas City & Vicinity. Case 17–CA–16761

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 26, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on July 8, 1993, against KD Christian Construction Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Copies of the charge and complaint were duly served on the Respondent.

The complaint alleges in substance that the Respondent has failed and refused to continue in effect all the terms of its collective-bargaining agreement with the Union. The Respondent timely filed an answer to the complaint admitting the factual allegations of the complaint, but denying that it committed any unfair labor practices.

On August 31, 1993, the General Counsel filed a motion to transfer proceeding to the Board and for Summary Judgment. The General Counsel's motion argues that, because all the factual allegations of the complaint have been admitted and the Respondent has raised no valid defense, the Motion for Summary Judgment must be granted.

On September 3, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

The Respondent admits the operative facts giving rise to the unfair labor practices alleged in the complaint, but denies the conclusionary unfair labor practice allegations, without explanation.

Because the operative facts are admitted, we find that the Respondent's bare denials are insufficient to refute the allegations of violations and that no material factual issues have been raised. Accordingly, we find all the factual allegations of the complaint to be true. The Respondent has filed no response to the Notice to Show Cause. Therefore, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Kansas City, Missouri, where it is engaged as a contractor in the construction industry. During the 12-month period ending June 30, 1993, the Respondent, in the course and conduct of its business, performed services valued in excess of $50,000 for various enterprises within the State of Missouri which are directly engaged in interstate commerce. The Respondent admits, and we find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The Respondent admits, and we find, that the following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> Employees who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (to include work previously performed by Lathers) in the following counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

The complaint in paragraph 5(b) alleges, and the Respondent admits, that about March 27, 1990, as an employer engaged in the building and construction industry, it granted recognition to the Union as the exclusive collective-bargaining representative of the unit employees by assigning its bargaining rights to the Builders' Association of Missouri (BAM), thereby admittedly becoming bound to a collective-bargaining agreement between BAM and the Union, effective from August 20, 1990, until March 31, 1993, without regard to whether the majority status of the Union has been established under the provisions of Section 9 of the Act.[1]

[1] Thus, we find that a relationship under Sec. 8(f) of the Act was established between the Respondent and the Union. However, the complaint in par. 5(d) alleges, and the Respondent admits, that ''for the period August 20, 1990 to March 31, 1993, based on Section

Continued

B. *Refusal to Comply with the Contract*

The Respondent admits that since about December 1992 it has failed and refused to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union by ceasing to deduct supplementary dues pursuant to valid dues-checkoff authorizations and by failing to remit the supplementary dues to the Union; and by failing to make payments to the health and welfare fund, pension fund, and apprenticeship educational fund on the behalf of unit employees. The contractual provisions with which the Respondent failed to comply relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for purposes of collective bargaining. We find that the Respondent has failed and refused to bargain collectively with the representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 1992 to deduct dues and to remit them to the Union, and to make fringe benefit fund contributions on behalf of its unit employees, as required by its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make whole its unit employees by making all unpaid fringe benefit contributions since December 1992 to the various funds as provided by the August 20, 1990–March 31, 1993, collective-bargaining agreement with the Union,[2] and by reimbursing employees for any expenses ensuing from the Respondent's failure to make such contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We also shall order the Respondent to remit to the Union all union dues since December 1992 as required by its collective-bargaining agreement with the Union. All payments to the Union and the employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, KD Christian Construction Company, Inc., Kansas City Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Carpenters District Council of Kansas City & Vicinity, as the limited exclusive representative of the employees in the appropriate unit described below, by failing and refusing since December 1992 to make contributions to fringe benefit funds, including the health and welfare fund, pension fund, and apprenticeship educational fund, and by failing and refusing since December 1992 to remit union dues to the Union as required by the August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union,. The unit is:

> Employees who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (to include work previously performed by Lathers) in the following counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union through its expiration.

(b) Make whole the unit employees by making contributions to the fringe benefit funds as required since December 1992 by the August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union, and by reimbursing, with interest, the unit employees for any expenses ensuing from the failure to make such contributions, in the manner set forth in the remedy section of this decision.

9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.'' To the extent that conclusionary par. 5(d) arguably alleges that the Union acquired full 9(a) status, par. 5(d) is inconsistent with the more specific par. 5(b). It appears, based on the Respondent's becoming bound to the collective-bargaining agreement between BAM and the Union, that a relationship under Sec. 8(f) of the Act was established between the Respondent and the Union. Under the principles announced in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), an 8(f) signatory union does not acquire full 9(a) status based solely on the employer's adoption of an 8(f) agreement. Accordingly, we find that the Union is the limited exclusive representative of the employees in the unit. Id. at 1386–1387.

[2] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

(c) Remit to the Union dues as required since December 1992 by the August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union, with interest, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of reimbursements due.

(e) Post at its Kansas City, Missouri, facility copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Carpenters District Council of Kansas City and Vicinity as the limited exclusive bargaining representative of our employees in the appropriate unit set out below, by failing and refusing to make contributions to fringe benefit funds, including the health and welfare fund, pension fund, and apprenticeship educational fund, and by failing and refusing to remit union dues to the Union, all as required by our August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union. The unit is:

> Employees who perform work which has historically and traditionally been performed heretofore by members of the United Brotherhood of Carpenters and Joiners of America, AFL–CIO (to include work previously performed by Lathers) in the following counties: Jackson, Clay, Platte, Lafayette, Ray, Carroll, Saline, Bates, Johnson, Cass, Harrison, Mercer, Grundy, Daviess, Caldwell, Livingston, Henry, St. Clair, Hickory, Camden, Laclede and Vernon in Missouri, and Wyandotte, Johnson, Miami, Linn and Leavenworth in Kansas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of our collective-bargaining agreement with the Union through its expiration date.

WE WILL make whole our employees in the unit set out above by making contributions to the fringe benefit funds since December 1992 as required by our August 20, 1990–March 31, 1993 collective-bargaining agreement with the Union, and WE WILL reimburse, with interest, the unit employees for any expenses ensuing from our failure to make such contributions.

WE WILL remit to the Union dues as required since December 1992 by our collective-bargaining agreement with the Union, with interest.

KD CHRISTIAN CONSTRUCTION COMPANY, INC.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''